

Maurer School of Law: Indiana University Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

1936

Book Review. Taylor, H. B., The Law of Guardian and Ward

Ralph F. Fuchs

Indiana University School of Law

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>



Part of the [Family Law Commons](#), and the [Juvenile Law Commons](#)

Recommended Citation

Fuchs, Ralph F., "Book Review. Taylor, H. B., The Law of Guardian and Ward" (1936). *Articles by Maurer Faculty*. 1578.
<http://www.repository.law.indiana.edu/facpub/1578>

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

to be well informed upon the technical aspects of the case, and he does not fear an opposing attorney's use of the material as "ammunition" against him; as a matter of fact, the better informed the latter is, the more intelligent and less annoying will be his questions on cross-examination. A different reaction may be expected from the dishonest and incompetent "expert." He would prefer that the legal profession remain in complete ignorance of such matters, and finds the use of such books to his decided disadvantage. The lawyer's use of such a guide as the instant volume thus accomplishes a twofold objective, promoting intelligent and fair cross-examination of experts, and uncovering dishonesty or incompetency of experts, where existent.

FRED E. INBAU†

Chicago, Ill.

THE LAW OF GUARDIAN AND WARD. By Hasseltine Byrd Taylor. Chicago: The University of Chicago Press. 1935. Pp. x, 194.

One would gladly bestow praise upon the execution of the monograph under review as well as upon its purpose and conclusions; but it is necessary to insist, with all due recognition of the right of other "social scientists" to venture into the legal field, that at least minimum standards of performance in presentation and in the handling of legal materials be adhered to. It is fair to say that these are sadly lacking in this little volume, despite the fact that it is Social Service Monograph 35, edited by the Faculty of the School of Social Service Administration of the University of Chicago.

The author deals with guardianship of minors and rightly insists upon appraising all aspects of her subject according to the functional standard of the human interests that are supposed to be served. Her emphasis upon the necessity for effective administration is obvious common sense and contrasts favorably with the uncritical acceptance of existing methods that would characterize an orthodox legal text upon the same subject. It is clear gain, too, to have it pointed out to lawyers and welfare workers alike that, while the state by means of guardianship is protecting the property of orphans who have substantial estates and is attempting through juvenile courts to rescue children who have been victimized by poverty or bad social conditions, it is doing next to nothing to secure the care of orphans who have little or no property. It sharpens one's perspective, moreover, to read the excellent historical summary in Chapter II, which brings together English feudal, equitable, and borough guardianship, testamentary guardianship, and the American legislative development of the eighteenth and early nineteenth centuries, from which have evolved the institutions and methods that prevail in the United States today.

The author's principal recommendations, which are foreshadowed in the introduction and elaborated in the conclusion, are that the functions of either juvenile courts or courts of probate be extended to the appointment of guardians of the person of minors whose need is brought to their attention by any means whatever, or that administrative agencies with similar duties be set up; that the selected tribunal be served by case workers who ferret out cases which are in need of attention and gather information regarding previously-authorized guardianships; that the selection and replacement of guardians, both of the person and of property, be made more

†Scientific Crime Detection Laboratory, Northwestern University School of Law.

largely a matter of magisterial discretion; that there be regular review of the periodical accountings and settlements of guardians of property, on the basis of checks and audits by a staff provided for that purpose; and that advance consultation concerning the needs of wards and the means of providing for them be regularly engaged in. In short, the provision of guardians should be as frequent as the need for them; the public supervisory agency should assume an active instead of merely a passive role; and adequate information upon which to base wise decisions should be gathered.

As a basis for such obviously sound recommendations the author should have supplied either a short, informative summary of the type of inadequate supervision of guardianships which now prevail in the United States, or else data to demonstrate the extent of the neglect, inefficiency, dishonesty, and loss in the care of minors and their property by guardians at the present time. The volume under review contains neither. Instead, more than 100 pages of the text are devoted to a tedious summary of the detailed provisions of the applicable statutes of the 48 states, accompanied by sparse case citations in support of occasional elaborations or supplementary rules. Such matters as the precise powers of guardians with respect to the management of the property of minors are minutely gone into. For ordinary legal purposes this material is largely worthless because what is needed is presented much better in other works. Much of the information so laboriously gathered is irrelevant to the author's thesis. Most of the remainder might have been set forth more clearly and precisely by means of tables of statutory provisions, rather than by the running text employed in the book. Some of it would have benefited greatly by being related to analogies in the law of trusts and in the law of decedents' estates.

The book contains legal errors and faults in presentation which go beyond the limits of tolerance. It saps one's confidence in the author's judgment to be told on the first page, naively, that by the change from the master-servant relationship to that of employer and employee "a relationship in status has been replaced by one in contract." On page 3 it is stated in one sentence that parents and guardians occupy positions which are "similar in rights, remedies, and responsibilities" and in the following two sentences that, whereas parents owe a duty of support out of their own means, guardians do not. On pages 25, 36, and 37 it is announced, each time as news, that testamentary guardianship is not authorized in Iowa. Statutory citations, although with occasional lapses into full citations, are by section alone, necessitating reference to a table of compiled statutes on page 179. The latter properly includes the California Probate Code of 1931 which, however, is entered also in a list of session acts and older compilations printed on page 180. The latter includes the New Jersey Compiled Statutes Supplement of 1925-30, omitted from the preceding page. Occasionally a citation is unidentifiable except by comparison with others (p. 61, note 9). On Page 83 the statement that "personalty can be exchanged for realty by the guardian without a court order unless one is specifically required by statute" is not supported by the single case which is miscited in the footnote (74 N. C. 549 instead of 368) and conflicts with a statement on page 87 that a court order is necessary. On pages 104-108 the courts having guardianship jurisdiction in the various states are classified according to names without other indication of the nature of their general jurisdiction. Typographical errors are frequent in the reproduced (and very legible) typewriter type.

On page 136 of the monograph reference is made to the information gathered by the Veterans' Administration Guardianship Division regarding laxity in guardianship administration, which indicates that an unholy mess prevails, as anyone familiar with normal trial-court inertia would naturally suppose. It is the sole bit of evidence adduced in the entire book, and one thirsts for more. Now that the author has

called attention to the requirements for improvement in administration, perhaps study of probate records can follow in order to supply data and argument for the effort to bring about change. At best, legislative inertia will be difficult to overcome in a matter which can hardly be raised to a prominent place in the public consciousness. If the monograph, despite its faults, can contribute to at least a professional appreciation of guardianship as an aspect of welfare administration rather than as a branch of private law, it will serve a useful purpose.

RALPH F. FUCHS†

St. Louis, Mo.

CASES ON THE LAW OF BANKRUPTCY, INCLUDING THE LAW OF FRAUDULENT CONVEYANCES. By Evans Holbrook and Ralph W. Aigler. Chicago: Callaghan and Company. 3d edition by Thomas Clifford Billig. 1936, pp. xviii, 796.

IN his revision of *Holbrook and Aigler* Professor Billig announces the modest purpose of presenting teaching materials on the recent developments in bankruptcy law "against the background of a standard casebook . . . well known to law teachers." This precludes him from altering the structure of the book but not from effecting a thorough redecoration. The chapter and section headings of the earlier edition have been retained in their original sequence and a few new sections and one new chapter have been added. The six chapter headings in order of appearance are: Jurisdiction, Prerequisites to Adjudication, Administration, Compositions, Discharge, and The Amendments of 1933, 1934, 1935. The high abstraction to which this organization drives the editors is well illustrated in Chapter II (Prerequisites to Adjudication), Section II (Involuntary Proceedings), Subsection D (Acts of Bankruptcy), Arabic numeral 1 (Conveyances with Intent to Hinder, Delay, or Defraud). The materials reprinted here are subdivided by the present editor into three parts: (a) Independent of Bankruptcy, (b) As an Act of Bankruptcy, and (c) Voidable by the Trustee. The first part contains forty pages of none too enlightening text, the second part offers the single case of *American Surety Co. v. Marotta* (287 U. S. 513) and a footnote, and the third part yields for its first three cases *Benedict v. Ratner* (268 U. S. 353), *Dean v. Davis* (242 U. S. 438), and *Moore v. Bay* (284 U. S. 4). Even the ablest teachers are likely to find difficulty in making anything out of these cases in such a setting. (Professor Billig foresees this objection and suggests that some teachers may wish to postpone consideration of part (c) until a later chapter is reached.) Similar criticism could be made of the long subsection on preferences (Arabic numeral 2 of the same chapter). But to criticize the organization of this edition is to criticize that of the earlier editions, and in the case of a book so well known such an undertaking could be hardly other than superfluous.

In his redecoration of the earlier structure Professor Billig has done a workmanlike job. More than half of the opinions that he reprints at length are from cases decided since the publication date of the last edition. These cases are well selected and the opinions are presented without too much editing. They are supplemented by some text material and by annotation that is luxuriant in its reference to law review sources and other cases. The editor pays tribute to his wife for excellent work in the chapter on Discharge.

†Professor of Law, Washington University.